

ORIGINAL

EXCEPTION



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OPEN MEETING AGENDA ITEM

BEFORE THE ARIZONA CORPORATION COMMISSION

12

COMMISSIONERS

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Arizona Corporation Commission

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JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION
OF ARIZONA WATER COMPANY, AN
ARIZONA CORPORATION, TO EXTEND
ITS EXISTING CERTIFICATE OF
CONVENIENCE AND NECESSITY AT
RIMROCK, YAVAPAI COUNTY,
ARIZONA

DOCKET NO. W-01445A-05-0705

EXCEPTIONS TO RECOMMENDATION OF
ADMINISTRATIVE LAW JUDGE

On July 11, 2006 the presiding administrative law judge, Amy Bjelland entered a recommendation in this matter (the "Recommendation"). Arizona Water Company (the "Company") now presents its Exceptions to the Recommendation.

The Company takes exception to the portions of the Recommendation that conclude and order that the Company's application to extend its existing Certificate of Convenience and Necessity be denied for Parcel Three of its application, as depicted on Exhibit A and described in Exhibit B to the Recommendation.

As testified to by the Company's witness Vice President-Engineering Michael J. Whitehead, to serve Parcel One of the extension area, the Company plans to extend a 12-inch pipeline from the terminus of its existing distribution system to reach Parcel One. The extension will be in close proximity to Parcel Three, and, as Mr. Whitehead also testified:

When [the Company] runs a 12-inch pipeline of adequate capacity to serve quite a few folks, there will be, particularly if this 12-inch pipeline is run through an area where they have never had the opportunity to request water service in the past...many requests for service from that 12-inch pipeline. (Tr., at pages 19,20)

These facts, the Company submits, negate the Staff's primary reason for recommending that Parcel Three remain uncertificated, i.e., that the Company had no requests for service at the time of the hearing. Mr. Whitehead's testimony demonstrates that requests for service are only a matter of time, in the Company's experience, after the installation of a major facility like the 12-inch pipeline. This, the Company argues, that it is administratively efficient to certificate this area now. In addition, as Mr. Whitehead also testified, no property owner from Parcel Three objected to the approval of the Company's application after receiving notice of the application and the hearing in this matter.

The other reason given by the Staff for recommending that Parcel Three remain uncertificated is that it adjoins a neighboring water company's certificated area. While this is true, the neighboring company, Montezuma Rimrock Water Co., LLC ("Montezuma") did not become a party to this matter until Staff notified them about the proceedings. In addition, while the Company plans to extend a 12-inch pipeline, Montezuma has no present plans to serve Parcel Three.

There are other compelling reasons why Parcel Three should be added to the Company's certificated area, even without a request for service at this time. In Docket No. W-01445A-06-0059, currently pending before the Commission, in a June 30, 2006 Supplement to its Staff Report, a copy of which is attached hereto as Attachment A, the Staff, at page 3 of the Supplement, listed certain factors that it believes the Commission

1 should consider in deciding whether to allow extensions into areas for which there are
2 no requests for service. Those factors are:

- 3
- 4 1. Whether inclusion of the area could reasonably be expected to contribute
- 5 to operational efficiencies.
- 6 2. Whether exclusion of the area could reasonably be expected to result in
- 7 operational inefficiencies.
- 8 3. Whether there is a competing application for the area.
- 9 4. Whether a customer in the area requests to be excluded and the nature of
- 10 that request.
- 11 5. Whether the area is contiguous to the company's current service territory.
- 12 6. Whether the requested area "squares off" the service territory or fills in
- 13 holes in the service territory.
- 14 7. Whether the company at issue is financially sound.
- 15 8. Whether the company at issue is in compliance with Commission
- 16 decisions, ADEQ and ADWR.
- 17 9. Other showings by the company at issue that it is in the public interest to
- 18 approve the extension.
- 19
- 20
- 21

22 In this case, all of these factors weigh in favor of certifying Parcel Three. As
23 noted above, inclusion of the area will contribute to operational efficiencies, and there
24 will be no inefficiencies. There are no competing applications, and no requests to be
25 excluded. The area will help to square off the Company's existing area, and avoid a
26 "hole" in the future. The Company is financially sound, and in compliance with ADEQ
27 and ADWR regulations, and Commission requirements. There is no question about the

1 inclusion of Parcel Three being in the public interest. The Company, therefore, agrees
2 with the Staff's criteria, as detailed in Attachment A, criteria that overwhelmingly
3 supports the certification of Parcel Three.

4 **CONCLUSION**

5 The Company respectfully submits that the following revisions should be made
6 to the Recommendation:

- 7
- 8 1. Strike Finding of Fact No. 30, and substitute the following:

9 The totality of the circumstances in this case demonstrates that
10 Arizona Water Company should be granted a CC&N to serve Parcel
11 Three.

- 12
- 13 2. Amend the first ordering paragraph to read as follows:

14 IT IS THEREFORE ORDERED that the application for CC&N
15 extension for Parcels One, Two and Three, more specifically described in
16 the legal description in attached Exhibit B shall be, and hereby is, granted.

- 17
- 18 3. Strike the second ordering paragraph.

19

20 RESPECTFULLY SUBMITTED this 18th day of July 2006.

21 **ARIZONA WATER COMPANY**

22

23 By: Robert W. Geake

24 Robert W. Geake
25 Vice President and General Counsel
26 Arizona Water Company
27 P. O. Box 29006
28 Phoenix, AZ 85038

1 Original and thirteen (13) copies of the foregoing filed this 18th day of July 2006 with:

2 Docket Control Division
3 Arizona Corporation Commission
4 1200 West Washington Street
5 Phoenix, Arizona 85007

6 A copy of the foregoing was hand-delivered this 18th day of July 2006 to:

7 Amy Bjelland
8 Administrative Law Judge
9 Hearing Division
10 Arizona Corporation Commission
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13 A copy of the foregoing was mailed this 18th day of July 2006 to:

14 David M. Ronald, Staff Counsel
15 Legal Division
16 Arizona Corporation Commission
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18 Phoenix, Arizona 85007

19 Patricia D. Olsen
20 Montezuma Rimrock Water Co. LLC
21 P.O. Box 10
22 4599 E. Goldmine Road
23 Rimrock, Arizona 86336

24 By: Robert W. Peake


ORIGINAL

ATTACHMENT A

MEMORANDUM

305 M

TO: Docket Control
Arizona Corporation Commission

FROM: Ernest G. Johnson 
Director
Utilities Division

Date: June 30, 2006

RE: SUPPLEMENT TO STAFF REPORT FOR ARIZONA WATER
COMPANY TO EXTEND ITS EXISTING CERTIFICATE OF
CONVENIENCE AND NECESSITY AT CASA GRADE, PINAL
COUNTY, ARIZONA. (DOCKET NO. W-01445A-06-0059)

A Procedural Order issued on May 11, 2006 directed Staff to address public comment letters submitted by potential intervenors. The letters concerned the extension of Arizona Water Company's Certificate of Convenience and Necessity ("CC&N") into areas for which Arizona Water Company did not have requests for service. Staff has modified its recommendations made in its Staff Report filed April 3, 2006. Other than the exclusion of Section 35 discussed below, Staff continues to recommend approval of Arizona Water's application with the same conditions included in its Staff Report filed on April 3, 2006.

EGJ:LAJ:mfm

Originator: Linda A. Jaress

Attachment: Original and 13 Copies

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AZ CORP COMMISSION
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Service List for: Arizona Water Company
Docket No. W-01445A-06-0059

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

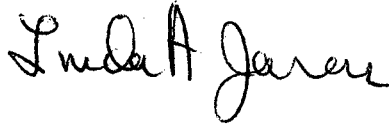
ARIZONA WATER COMPANY
DOCKET NO. W-01445A-06-0059

APPLICATION FOR EXTENSION
OF CERTIFICATE OF ITS
CONVENIENCE AND NECESSITY

June 30, 2006

STAFF ACKNOWLEDGMENT

The Supplemental Staff Report for Arizona Water Company (Docket No. W-01445A-06-0059) was prepared by the Staff member listed below.

A handwritten signature in black ink, reading "Linda A. Jaress". The signature is written in a cursive, flowing style.

Linda A. Jaress
Executive Consultant III

Procedural Order

This Supplemental Staff Report is being filed pursuant to a Procedural Order Issued by the Administrative Law Judge on May 11, 2006. The Procedural Order directed Staff to file a Supplemental Staff Report addressing the issues raised in written public comments submitted by Picacho Water Company, Lago Del Oro Water Company, Santa Rosa Water Company and Ridgeview Utility Company (collectively, "Robson"), Global Water Resources, LLC ("Global") and Ms. Patricia J. Robertson and addressing Arizona Water's response to the public comments.

The Public Comment Letters

Robson's Public Comment was filed on May 5, 2006, stating that Robson opposes the initial grant or extension of a Certificate of Convenience and Necessity ("CC&N") to a water provider who does not have a request for service covering the area, or "substantially all" the area requested. The reason given was that such applications "violate the Arizona Corporation Commission's ("ACC") long-followed policy of requiring a request for service before a CC&N is extended" and that "Arizona Water Company's ("AWC") obvious plan to lock-up for itself the balance of the un-certificated territory in Pinal County directly harms the interests of the Robson Utilities and other providers." Robson urges the Administrative Law Judge "to require a request for service for each portion of the requested extension area before recommending the extension of AWC's CC&N to include the area."

On May 8, 2006, Global filed a similar letter in the docket. Global expressed concern that "AWC's practice of requesting areas with no requests for service is directly contrary to ACC practice and precedent." Global was also concerned about the amount of time and effort it takes to discern the "discrepancies" between the requests for service and the extension areas requested. Global also accuses Arizona Water of engaging in a pattern of land grabs. Finally Global requests that the Commission direct Arizona Water, "to stop its practice of filing for extensions without legitimate requests for service from all affected landowners."

Letter from Ms. Robertson

Ms. Patricia J. Robertson's property is located in Section 35, Range 7 East, Township 6 South and is included in Arizona Water's proposed extension area. Section 35 is surrounded on three sides by Arizona Water's current CC&N area. The forth side of Section 35 borders on the current service territory of Robson's Picacho Sewer and Picacho Water Companies. On May 4, 2006, Ms. Robertson filed a letter in this docket wherein she indicated that it was "inappropriate" to include her property in Arizona Water Company's CC&N extension "at this time." She mentioned that she had not requested water service from Arizona Water and was "concerned that Arizona Water Company does not provide sewer service, and that it will be difficult to find a sewer

provider who is willing to provide sewer service without being able to also provide water service." Staff interpreted these comments to mean that Ms. Robertson desires to have her property excluded from Arizona Water's CC&N extension area.

Arizona Water Company's Response

On June 16, 2006, Arizona Water filed its response to Ms. Robertson's letter by arguing that her concerns about sewer service are unfounded. The Company's response to Global and Robson is there is no Commission policy requiring that requests for service exactly match the CC&N area requested. The Company also supports its request for inclusion of those areas for which it does not have a request for service by arguing that it is sound public policy to give utilities the flexibility to extend into areas that are "a natural and logical extension" to meet present and future needs of growth and development. The Company also contends that system design and extensions should not be accomplished in a "fractured, disorganized fashion." It also believes administrative efficiency can be accomplished by such extensions.

Staff's Response

Staff reviewed the letters filed by Robson, Global and Ms. Robertson along with the response of Arizona Water. First, Staff does not agree that the Commission has an inflexible, long-standing policy against approving CC&N extensions into areas in which there are no requests for service. A recent Water Utility of Greater Tonopah ("WUGT") case is such an example. Although not precisely on point, Decision No. 68451, issued on February 2, 2006, approved WUGT's request for a retroactive order correcting a 1985 decision which, in error, omitted a portion of the legal description of service territory being transferred to WUGT. There were neither customers nor requests for service in the area in question. However, it was surrounded on three sides by WUGT. The Decision contained the following language: "We also agree with Staff that the inclusion of the 1 ½ sections of land in WUGT's CC&N is in the public interest given its land-locked position."

Second, Staff is concerned that if the Commission were to establish a firm policy against approving extensions where there is no request for service (as Global and Robson seem to favor), utilities would be motivated to shop for requests for service to reserve areas for planning purposes. At best, this would increase costs to the utilities. At worst, these costs could be passed on to ratepayers. Also, a request for service could become a commodity going to the highest bidder rather than to the company which is best able to further the public interest.

Staff believes there are certain circumstances under which the Commission should consider approving extensions into areas for which there are no requests for service. In a recent case, Docket W-01445A-06-0317, Staff recommended approval of extensions into

small, contiguous areas for which there were no requests for service. Staff believes the Commission should consider those factors along with others in deciding whether to allow extensions into areas for which there is no request for service. These factors are:

1. Whether inclusion of the area could reasonably be expected to contribute to operational efficiencies.
2. Whether exclusion of the area could reasonably be expected to result in operational inefficiencies.
3. Whether there is a competing application for the area.
4. Whether a customer in the area requests to be excluded and the nature of that request.
5. Whether the area is contiguous to the company's current service territory.
6. Whether the requested area "squares off" the service territory or fills in holes in the service territory.
7. Whether the company at issue is financially sound.
8. Whether the company at issue is in compliance with Commission decisions, ADEQ and ADWR.
9. Other showings by the company at issue that it is in the public interest to approve the extension.

The factors listed above would apply equally to all requests for initial CC&Ns and extensions of CC&Ns including those of Robson and Global as well as those of Arizona Water.

Both Robson and Global believe Arizona Water is "land-grabbing" and "locking-up" service territory. Any CC&N or CC&N extension application approved by the Commission results in locking up service territory to the exclusion of other providers. Furthermore, Staff is uncertain as to the precise meaning of land-grabbing and locking-up service territory, how they would be proven and what law, rule or decision such actions violate. In this case, after comparing the requests for service to the requested CC&N extension area, Staff perceives no land-grabbing taking place.

Regarding Ms. Robertson's letter, clearly, it is not in the best interest of Robson for Arizona Water to extend to Section 35 because it reduces Picacho Water Company's potential for expansion. Staff has not performed an analysis as to which company is most appropriate to serve section 35 because there is no request for service, no competing application to serve and no showing by Arizona Water that the public interest would not be served by the exclusion of Section 35 in its CC&N. Whether or not Ms. Robertson's concerns about sewer service are valid, absent a showing that there is a specific need to include Section 35 in the extension area, Ms. Robertson's concerns should be honored. Therefore, Staff recommends that the Commission deny Arizona Water's extension to Section 35.

Other than the exclusion of Section 35 mentioned above, Staff continues to recommend approval of Arizona Water's application. Staff continues to recommend approval of the CC&N extension with the same conditions included in its Staff Report filed on April 3, 2006.